

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A REGULAR MEETING HELD ON
MARCH 8, 2005

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
DAWN SLOSSON
VICTORIA SELVA

ABSENT: NONE

ALSO PRESENT: COLLEEN OCONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:00 P.M.

1. Roll Call.

Secretary SLOSSON called the Roll Call. All members present.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property notices were notified by mail

MOTION by GALLAGHER seconded by SELVA to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by POPOVSKI seconded by SLOSSON to approve the meeting minutes of January 11, 2005 as presented.

MOTION carried.

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PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
(5) Antonio Cavaliere Permanent Parcel No. 08-35-300-007 08-35-300-006	Section 10.0323(A)(9)(a)
(6) Landtec Associates Permanent Parcel No. 08-25-427-002	Section 10.0331(8) 10.0704(D)(3)(b) 10.0704(D)(3)(b)
(7) Elder Automotive, Macomb Land Co LLC Permanent Parcel No. 08-33-352-032 08-33-352-033 08-33-353-003 08-33-353-004	Section 10.0347
(8) Russell W. Craig Permanent Parcel No. 08-32-400-013 08-32-400-015	Section 10.1605(G)
5. INTERPRETATION OF A PROVISION OF THE ZONING ORDINANCE; Section 10.0323(A)(9)(a)-Request for interpretation of requirements of zoning ordinance as it relates to parking for building Located on the east side of Card Road, approximately 456 feet north of Hall Road; Section 35; Antonio Cavaliere, Petitioner. Permanent Parcel No. 08-35-300-007.	

Chairman FLORENCE read the findings and recommendations of March 3, 2005. They are as follows:

The petitioner is requesting an interpretation/variance of Section 10.0323(A)(9)(a) as it applies to a proposed office building on Card Road, north of Hall Road.

Section 10.0323(A)(9)(a) is herewith repeated for your reference.

a. *Use of basements in office buildings.* If the basement of an office building is used exclusively as a service area for the levels above grade then the basement qualifies for special exception as noted in subsection 10.0323 4.a.--c. To be considered as a service area, the uses of the basement shall be limited to the following or similar uses as determined by the Planning Commission: storage area, filing rooms, meeting rooms,

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library, restrooms, employee lounge/break room, and utility rooms. Under no circumstances shall any rooms or areas be set aside in the basement for permanent work stations or private offices for employees or tenants or to provide direct service to the general public, such as waiting rooms, treatment rooms or similar activities. To qualify for this special exception the owner shall submit a floor plan for the basement area together with the site plan that describes in detail the proposed uses for the basement. The Building Official shall review the floor plan and make a report to the Planning Commission as to the proposed use of said basement. The basement must be kept as a service area for the life of the building and further a document to this effect shall be recorded with the County Register of Deeds.

b. *Atrium exception.* The floor area for any area determined to be an atrium for any commercial or office use shall be subtracted from the gross floor area of the proposed building for purposes of calculating required parking spaces.

We are also providing the zoning ordinance requirements for parking for offices and includes 10.0323(A)(4)a, b & c.

Office.		
a.	Banks, credit union, savings and loans and similar financial institutions	One (1) space per one hundred (100) square feet of gross floor area of building including basement area, five (5) stack up spaces per outdoor teller window, two (2) per twenty-four (24) hour banker.
		If the basement qualifies for special exception as defined and regulated pursuant to subsection 10.0323A.9., as amended, then one (1) space per six hundred (600) square feet of gross floor area of the basement shall be added to the spaces required for the floor space above the basement.
b.	Business offices, professional offices of architects, attorneys, accountants, engineers, real estate brokers, etc.	One (1) space per one hundred fifty (150) square feet of gross floor area of building including basement area, within a minimum of five (5) spaces amended. If the basement qualifies for special exception as defined and regulated pursuant to subsection 10.0323A.9., as amended, then one (1) space per six hundred (600) square feet of gross floor area of the basement shall be added to the spaces required for the floor space above the basement.
c.	Offices of doctors and dentists, medical, dental and veterinary clinics	One (1) space per one hundred fifty (150) square feet of gross floor area of building including basement area, with a minimum of five (5) spaces. If the basement qualifies for special exception as defined and regulated pursuant to subsection 10.0323A.9., as amended, then one (1) space per six hundred (600) square feet of gross floor area of the basement shall be added to the spaces required for the floor space above the basement.

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RECOMMENDATION:

It is recommended that the variance/interpretation request be denied. The Zoning Ordinance as written makes no distinction between the use of a mezzanine from that of the main floors of a building. Further, there is nothing in the Building Code that would restrict the use of the mezzanine different from the main floor. The applicant in this case has put on the record that the use of the mezzanine would be limited to storage and mechanical equipment.

It must be realized that every building needs an area for storage and mechanical equipment. When parking formula for any use is determined it is based on the fact that the building/use in question will need an area for storage and mechanical equipment. The computation of parking needs for an office use of one (1) space per 150 square feet of gross floor area in the Macomb Township Zoning Ordinance takes into consideration that the parking needs for that building including areas needed for storage and mechanical equipment. The Macomb Township Zoning Ordinance as noted above provides for an exception for the use of basements in office buildings. The language in the zoning ordinance does not reference mezzanines with the exception applied to basements. The undersigned would, however, support the use of the same language as applied to basements to mezzanines in subject case. The applicant's letter of January 10, 2005 that is made part of this application does not seek relief using the special exception but seeks total relief from all parking requirements for the entire mezzanine area.

Therefore, the undersigned respectfully recommends that the request be denied for the following reasons:

1. Compliance with the strict letter of the parking requirement would not unreasonably prevent the ownership from using the property as zoned. Other "office" structures planned in Macomb Township will be required to comply with the same parking requirements, which is evidence that the parking requirement as currently written would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in office developments in Macomb Township. The other owners are or will be required to comply with the 1 space per 150 square feet of gross floor area requirement.

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3. There is nothing unusual about the parcel in question that sets it apart from other parcels zoned for use as an office building in Macomb Township. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variance would amount to increasing the floor area by 15,680 square feet for which there would be no parking provided, thus causing the building to be 107 spaces short or 64% less than required. Even if the special exception was applied for and accepted based on section 10.0323(A)(9)(a) the plan as proposed would be 26 spaces short. Given that there is an opportunity in the zoning ordinance to provide for relief through a special exception there is no basis for relief outside said exception.

The following letter of explanation was submitted by the petitioner dated January 10, 2005 as follows:

“We have proposed to build a 28,000 square foot building on the east side of Card Road just north of M-59. Upon review of our plans the Township’s planners have indicated that because our plan shown a second floor, per the Township’s ordinance, parking at one space per 150 square feet will be required. We responded to the planner that the second floor space is an attic to be used only for storage and mechanical equipment. Apparently the Township’s ordinances make no mention of an do not address this attic storage issue and therefore the planners can only address it as a second story and require that it be figured into the parking calculation.

In my discussion with the planners I indicated that the attic space would be noted as such on the plans and further that without an occupancy permit the space could only be used for storage and not for office space. The response we have received is that if the space is there any occupant of the building could convert it to office space, albeit illegally, and the Township would have no way of policing the situation. We are requesting a variance because we believe that in essence an undue hardship is being placed on law-abiding citizens in the reasonable use of their property because someone “might” violate a building ordinance.

In the past fifteen years we have built several office buildings in a number of communities. The trend we have seen lately is that more and more office users are interested in the availability of storage space in the buildings they occupy. Even when offsite storage is available they prefer onsite storage because of accessibility and security concerns. I believe this interest in storage space is in large part due to ever increasing requirements for record keeping as well as office materials and such which are being purchased in bulk to have them available and to save on cost. I would suggest that in the past it was possible to provide basements and storage rooms without a great cost because land was much less expansive and building costs and maintenance were proportionally

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much less than today. Likewise parking was not such a large share of the building cost as it is today. In our proposed building if we were to provide storage space it would end up costing over \$150.00 per square foot. Six hundred square feet of storage and mechanical space in this attic, which the ordinance could call office space, would end up costing \$90,000.00. This is a totally unreasonable cost that cannot be justified in any way.

The planners have indicated that there is a reduced parking requirement in a basement exception to the ordinance. It provides for one space of parking per 600 square feet of basement. In our situation a basement for our building is not very practical and not desirable because of cost and our proximity to the Clinton River and its adjoining flood plain. The potential threat of water damage in the basement, if files are stored there, and the probable cost of protecting against such an event would be prohibitive. Likewise the logistics and cost of providing a basement and access to it for a number of users in a 28,000 square foot building is also prohibitive.

The planners have stated that if we are granted a variance and the attic storage is built someone could illegally use it as office space. They are argue that the Township does not have a way of policing to make sure this does not happen. It is our position that the possibility of one person doing something illegal does not justify depriving everyone else of the reasonable and lawful use of their property. We do not agree with the argument of policing the situation. Certainly during construction of the building a permit is issued and inspections are made. Occupancy permits are also required from the Township. This office building will be open to the public and therefore is subject to regular fire and safety inspections conducted by Township officials. In addition if this space was converted to office space it would have to meet A.D.A. requirements and complaints that it did not could be brought by any citizen not just a building or Township official.

It is our belief that ultimately the situation will police itself. If an occupant of the building cannot resist the temptation to convert the attic to office space they will have to contend with employees who have no place to park and even more importantly clients that cannot and will not go to that office because they have no place to park. Hopefully, such an occupant would think of this before they spend money to add offices, which will certainly hurt their business. If we are the landlords of the building we could not allow any tenant to use more than their share of parking to the detriment of other tenants. It is our interest to police the parking situation and make sure that our tenants are not harmed, which would in turn harm us. Should this building be built as an office condominium the respective co-owners and condo association would have responsibility and policing authority over the parking issue and could enforce the rules for parking just as they are able to enforce all other condo rules.

I believe this Board would agree that a building built per the ordinance and without attic space does not guarantee that parking will not be a problem. There are cases no doubt where a user might inadvertently end up with more employees and customers than the

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parking accommodates. I do not believe that under such circumstances the Township would accept blame and responsibility for the parking problem. Similarly in our situation if we are allowed to build the attic space and if parking did become an issue, the Township would have no responsibility because it did not issue any permit beyond the parking required for the actual office space on the first floor. It would solely be our responsibility as landlord or co-owner or association.

In the past few years this Township has had tremendous growth in its residential construction. We believe there is a great desire to use the limited land available efficiently and effectively. Yet in the present case we feel that the Township's ordinance has created an undue hardship which is causing the opposite result. The often heard compliant that land is being chewed up just to build parking lots seems quite true in our situation.

My intent in submitting this lengthy letter is to set forth our argument and reasons for our position so that Board members might have a better opportunity to investigate and consider this matter prior to the hearing. Many more office buildings are certainly going to be built and I can appreciate the Board's concern for any precedent our request may set. I suggest that if we look at the experience in surrounding communities some consideration could be given to our case as a test and not just dismiss it out right.

If possible I would like to invite the individual board member to visit our building at 44444 Mound Road just south of M-59 in Sterling Heights, MI which is similar to what we are proposing on Card Road. It is occupied by the engineering company, M.C.S. Associates, who I am using on this project and they would be happy to have us look at it."

Antonio Cavaliere, petitioner, was in attendance and commented that the Township Zoning Ordinance does not address mezzanines. It merely assumes that if the second floor is built, it's office space and must be included in the calculation. He stated that he realized that there was a basement exception to this. He doesn't want to put a basement on this property because it's right next to the Clinton River, which has floodplains and he doesn't want to get into that type of a problem. Since he has built other office buildings near floodplains, basements are not a preferred way to go.

He further stated the need for storage space is a response to the demand of the users that are occupying these buildings. Off-site storage is not really feasible. He further indicated that they may be trend setters for office buildings.

Antonio Cavaliere stated that they are not asking for additional space to be occupied, but strictly storage and mechanical. If it is strictly storage and mechanical it's not requiring any additional parking spaces. He stated the issue that needs to be addressed is how to insure that the space will be used as noted. It is possible that someone may finish the

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area for office. If that did occur they would be doing that in contravention to every ordinance that the Township has. The building is going to be built as an Office Condominium so that the association and that all the occupants of the building are not going to allow someone to use all the parking spaces by creating office space where there is not to be any office space. He concluded that they are building offices the way occupants would like to see them built. To consider that the 2nd floor will be office space is unreasonable.

Member GALLAGHER asked how many spaces are to be provided for this office.

Antonio Cavaliere stated they were required to provide just under 200 parking spaces. He noted that the mezzanine area was not calculated into the figure.

Member GALLAGHER stated that if the basement exception was sought you would still have to provide 26 spaces, which you are short. How would that issue be handled.

Antonio Cavaliere stated if he was constructing a basement he would seek the same variance. He questioned the reason for needing additional parking with the construction of a basement.

Member GALLAGHER stated because there will be storage and someone has to work in that storage area.

Jerome R. Schmeiser, Planning Consultant stated he has no problem using the same standard for the basement as for a mezzanine.

Antonio Cavaliere stated that if the mezzanine was to be used for a meeting area, etc. it would need to meet the ADA requirements and we have no intention of placing a lift within the building. He also noted that to either grant or deny based on the intention of what an occupant might do is not applicable. Lastly, if the concern was over the possible construction of office space in the mezzanine, there could be standards placed within the Restrictions that the area could only be used as storage/mechanical space. The enforcement of the issue would be self induced.

Member SELVA stated there was nothing to stop the mezzanine from being used in the same manner as the main floor. If a parking variance is granted there is nothing to restrict any future owner from changing the building over to fit his/her needs. Lastly, she felt that it was the members responsibility to look into the future to any possibilities that may occur.

Antonio Cavaliere stated that by bringing up the future is exactly what the hardship/difficulty is in this issue. No one can predict what will happen in the future. The only way to use that space other than storage and mezzanine is to do it contrary to

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the contract that's included in a lease or it's in violation of a building ordinance. You can't just occupy the space for what you want to occupy it for.

Public Portion: None

MOTION by SELVA seconded by SLOSSON to close the public portion.

MOTION carried.

MOTION by SELVA seconded by SLOSSON to deny the variance request of Section 10.0323(A)(9)(a)-Request for interpretation of requirements of Zoning Ordinance as it relates to parking for building; Located on the east side of Card Road, approximately 456 feet north of Hall Road; Section 35; Antonio Cavaliere, Petitioner. Permanent Parcel No. 08-35-300-007 and 08-35-300-006. Stated there is no doubt the petitioner is honest in his statement but must be cognizant of what future owners/uses could be.

Member POPOVSKI stated he was voting to deny the complete request as stated based on the written findings from the Consultants. He noted that the dialogue that was discussed did not show hardship.

Member GALLAGHER denied the request and agreed with the interpretation of the Planning Consultant that there has to be some parking requirements established whether it be for a basement or a mezzanine.

Member SELVA stated her reasons as in the motion made.

Member SLOSSON denied the request based on the parking requirement and not necessarily the use of the building.

Chairman FLORENCE voted denial of the request and that there is an ability to create a building on this plot which meets the requirements of the ordinance although it may be slightly smaller than what was planned it can meet the requirements and it can meet the additional 1 to 600 square foot parking for the mezzanine if we wanted to present that as the Planner has given the recommendation that he would support as in the interpretation of a mezzanine in cooperation with the basement exception. You can create a building to meet that particular requirement.

MOTION carried.

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Antonio Cavaliere stated that the Board needs to look forward, not expecting the worst but the best. Every tax dollar that every square foot brings you will be to the benefit of the community. Reducing the size of a building by 10,000 square feet to put an attic that will be assessed by \$20.00 as opposed to \$150.00 per square foot would cost this Township a lot of money. The township is now developing everything other than residential. He noted that it's been his experience that it's the industrial, commercial and office that pays the bills. Lastly, he indicated that he may be back on the basement exception.

Colleen O'Connor, Township Attorney, stated that no one here tonight was stating your request was unreasonable. There are standards the Zoning Board of Appeals has to adhere to and the standard is not one of reasonableness. You have to demonstrate a practical difficulty and shown that your piece of property could not be utilized as zoned.

6. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary Section 10.0331(8)-Request to allow an accessory structure without principal structure on parcel
Section 10.0704(D)(3)(b)-Request to allow an outbuilding to be 10.8 feet rather than 25 feet
Section 10.0704(D)(3)(b)-Request to allow an outbuilding to be 14.6 feet rather than 25 feet.
Located 1,522.06 feet east of Fairchild Road, or the south side of Renata, approximately ½ mile north of 21 Mile Road; Section 25; Landtec Associates, Petitioner. Permanent Parcel No. 08-25-427-002

Chairman FLORENCE read the findings and recommendations of March 3, 2005. They are as follows:

The purpose of the request is to enable the petitioner to acquire the easterly 320.12' of parcel 08-25-427-002 (currently measuring 498.95' x 261.26'). The parcel then acquired will provide a tie between the proposed Stoneridge Subdivision to the south of the property in question to the future Manchester Woods Subdivision to the north. The tie will provide the second means of access to each subdivision from the main entrance of each Subdivision from Fairchild. The balance of the property will measure 178.83' x 261.26' for the existing residence. The northerly 30' of the parcel is currently set aside for access to the properties and although a private road is named Renata. All of the yard setback requirements of the zoning ordinance will be met.

The petitioner is requesting permission to allow an outbuilding on a newly created parcel of property. The ordinance requires that such an accessory structure cannot exist on a site without a primary structure. The petitioner is also requesting variances to allow accessory structures on the balance of the property to set back 10.9' and 14.7' rather than the required 25'.

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The petitioner has assured the Township that should the variance be approved for the accessory structure, that it will be removed at the time the parcel is owned by Landtec and/or is platted.

With respect to the two accessory buildings on the balance of the parcel, it is the opinion of the Planning Consultant that a variance for these structures is not necessary via Section 10.0311(E)(f) which allows freestanding or detached structures to be located in the rear yard with a minimum of 7.5' from the side or rear property lines.

RECOMMENDATION:

It is recommended that the variance request to allow the accessory structure to remain without a primary structure be approved with the understanding that it will be removed within 6 months of the date of Board action.

It is noted that a variance for the other two outbuildings on the balance of the parcel is not necessary.

The petitioner submitted the following letter of explanation dated February 4, 2005 as follows:

"Section 10.0331.8 indicates that an accessory structure cannot exist on site without a primary structure. The current property owner will not remove the structure on Parcel "B" on the attached Certificate of Survey until the property is split. He is concerned that if he removes the structure and the split is denied for some reason, he will have lost an existing structure, causing an unnecessary hardship. When the split is approved, Parcel "B" will be combined with the balance of the future "Manchester Woods Subdivision" property. Landtec Associates will then remove the structure to develop their proposed subdivision. Granting this variance does not confer special privileges to the developer, it only protects the interest of the current land owner. Section 10.0704.D.3b requires that accessory structures be set back 25 feet from the rear lot line. The variances being requested are for two existing outbuildings which have been on the property for many years. The proposed splitting of this property does nothing to improve or worsen this situation. This is a condition which existed prior to Landtec Associates becoming involved in the property. Granting of these variances will not confer special privileges to Landtec Associates because this is an existing condition not created by the developer."

Craig Duckwitz, representative, was in attendance and gave some clarification to the request of the rear yard setback. The Zoning Ordinance in the R-1 district states the setback is 25 feet for an accessory structure and the other section as mentioned is 7 ½ feet. We would like to avoid any problems in the future and ask that those variances be granted under the sections that were petitioned.

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Jerome R. Schmeiser, Planning Consultant, stated he would agree with Craig Duckwitz on granting the rear yard setbacks.

Public Portion: None.

MOTION by SLOSSON seconded by SELVA to close the public portion.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by POPOVSKI:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0331(8)-Request to allow an accessory structure without principal structure on parcel; Located 1,522.06 feet east of Fairchild Road, approximately ½ mile north of 21 Mile Road; Section 25; Landtec Associates, Petitioner. Permanent Parcel No. 08-24-427-002. The accessory structure will be removed at such time as either the parcel is owned by Landtec and/or platted.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SELVA:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0704(D)(3)(b)-Request to allow an out building to be 10.8 feet rather than 25 feet; Located 1,522.06 feet east of Fairchild Road, approximately ½ mile north of 21 Mile Road; Section 25; Landtec Associates, Petitioner. Permanent Parcel No. 08-24-427-002. The variance is granted.

MOTION carried.

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The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0704(D)(3)(b)-Request to allow an out building to be 14.6 feet rather than 25 feet; Located 1,522.06 feet east of Fairchild Road, approximately ½ mile north of 21 Mile Road; Section 25; Landtec Associates, Petitioner. Permanent Parcel No. 08-24-427-002. The variance is granted.

MOTION carried.

Member SELVA left the meeting a 7:57 P.M.

7. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary section:
Section 10.0347-Request to allow an overhead door to face a residential area.
Located on the North side of Hall Road, East of Romeo Plank; Section 33; Elder Automotive Macomb Land Company, LLC, Petitioner. Permanent Parcel Nos. 08-33-352-032, 08-33-352-033, 08-33-353-003, 08-33-353-004

Chairman FLORENCE read the findings and recommendations of March 3, 2005. They are as follows:

The petitioner is requesting permission to allow the construction of doors along the north and east elevations of the proposed dealership planned for Jaguar, Landrover and Saab Automobiles.

The zoning ordinance requires that in all commercial warehouse or industrial districts where the respective zoning district line abuts and shares a common property line with residential parcels, that there shall not be any openings including windows other than required fire exit "mandoors" on the building elevation that faces the residential district if any part of the building is closer than 600' than said property line.

The proposed buildings are approximately 300' from said property line and approximately 450' from a proposed residential structure.

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The zoning ordinance provision regulating such openings was incorporated into the Macomb Township ordinance June 19, 2003. This amendment was necessary because of the experience the Township has had where such openings face residential areas. The megaphone affect of sound emanating from commercial and industrial buildings places a burden on abutting residential properties and it has been determined that it is a nuisance.

Since the time of the adoption of the amendment to the zoning ordinance, two recently approved site plans for automobile dealerships have been addressed by the Planning Commission. The ordinance requirement of no openings have also been applied to the site plans. On one such site plan the distance to a residential area was approximately 100+ feet and in the second plan, the distance between the building and the residential area exceeded 400'. In both cases, greenbelts and walls were provided as buffers. In one instance sound from speakers, etc. have provided a nuisance to the abutting residents. That issue is being addressed by the Building Department.

RECOMMENDATION:

It is recommended that the variance request to allow the doors on the north elevation be denied for the following reasons:

1. Compliance with the strict letter of the setback and no opening provisions would not unreasonably prevent the ownership from using the property as zoned. Other commercial and industrial developments planned in Macomb Township have been or will be required to comply with the same setback and no opening provisions which is evidence that the proper setback and no opening provisions would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners of commercial/industrial developments in Macomb Township. The other owners are or will be required to comply with the 600' setback and no opening provisions in commercial/industrial zones.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the 600' setback and no opening provision from being maintained from the property line.

With respect to the doors opening to the east, it is noted that although the land to the east is zoned for residential purposes, the Master Plan indicates that its development is planned as commercial. Therefore, it is recommended that the doors be allowed on the east elevation of the buildings.

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It is further noted that there is a possibility that noise from any doors or openings could exceed the decibel requirements of the zoning ordinance. Should this happen, provisions should be made for sound deadening devices such as vertical sound strips attached to the building or other assurances of the petitioner that the doors will be securely closed when not in use.

The following letter of explanation was submitted by the petitioner dated February 4, 2005 as follows:

- “1. A open space variance from Section 10.0346i along the North and East property lines consisting of:
 - a. 3 Overhead doors (Max. 14’x 24’) on the Jaguar/Land Rover building as shown on the North Elevation, sheet A-2.1. (There are 3 allowable fire-exit “man-doors” on the North Elevation).
 - b. 6 Overhead doors (max. 14’x 24’) on the Jaguar/Land Rover building as shown on the East Elevation, sheet A-2.1. (There are 4 allowable fire-exit “man doors” on the East Elevation).
 - c. Windows/Curtainwall on the Jaguar/Land Rover building as shown the East Elevation, sheet A-2.1.
 - d. 1 Overhead door (max. 14’ x 24’) on the Saab building as shown on the North Elevation, sheet A-2.2. (There is 1 allowable fire-exit “man door” on the North Elevation).
 - e. Windows/Curtainwall (on plane further back) on the Saab building as shown on the North Elevation, sheet A-2.2.
 - f. 2 Overhead doors (max. 14’ x 24’) on the Saab building as shown on the East Elevation, sheet A-2.2. (There are 4 allowable fire-exit “man-doors” on the East Elevation).
 - g. Windows on the Saab building as shown on the East Elevation, sheet A-2.2.

Comments:

- A. Jaguar/Land Rover is 283’-9” from the closest North property line. Saab is 321’-2” from the closest North property line. Residential plans show housing no closer than 129’-6” to our property line (which is shown within the Luchtman Drain easement and should therefore be a minimum of 30’ further away) for a total of 413’-3” from Jag and 450’-8” from Saab.
- B. Jaguar/Land Rover is 375’-8” from the closest East property line. Saab is 138’-10” from the closest East property line. There is currently no residential development planned for this property. It is Master Planned as Commercial property.

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- C. The location of the Luchtman Drain, the Middle Branch of Clinton River and the Flood Plains provide natural screening at the property line.
- D. Unique piece of property with Residential zoning on two sides of the property creates a severe hardship if not allowed to have doors or windows on two sides of two buildings within 600' of the Residential zoning. Property Use requirements (Auto dealership) also make it difficult to not allow Overhead doors. No loading dock areas requested.
- E. An oversight during the review phase was made for not catching new ordinance requirements enacted after initial submittal is the cause for our re-submittal to the variance board.
- F. Overhead door sizes are not completely finalized. Maximum size shown on request (14'h x 24'w), prefer to only be held to maximum and allowed to go smaller."

Laura McElheron, representative, was in attendance and presented several difference renderings of Jaguar and Saab that laid out the sites. She also indicated that according the Federal Highway Administration traffic noise is not a serious problem within 500 feet of heavily traveled freeways and 100 to 200 feet of lightly traveled roads, which she would consider the property in question as a lightly traveled road. In addition she reviewed various noise decibel levels.

Member GALLAGHER questioned why the Saab building door on the north elevation is 10 feet high.

Laura McElheron stated they were requesting a maximum size door at this time since it has not yet been determined.

Public Portion: None.

MOTION by SLOSSON seconded by POPOVSKI to close the public portion.

MOTION carried.

Bob Kirk, representative, stated they are trying to establish a state of the art dealership. If the variance were granted it could have a condition of hours of operation placed upon it.

Member GALLAGHER stated the board had recently granted a variance for the wall in the rear of property and now there is a variance for the doors which would open to the residential areas. The wall there to isolate the building from the residential districts. Part of the reason for the walls is to help deaden sound. Sound travels and that is why the 600 feet is in effect.

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MOTION by POPOVSKI seconded by GALLAGHER to deny the variance request of Section 10.0347-Request to allow an overhead door to face a residential area; Located on the north side of Hall Road, east of Romeo Plank; Section 33; Elder Automotive Macomb Land Company, LLC, Petitioner. Permanent Parcel No. 08-33-352-032, 08-33-352-033, 08-33-353-003 and 08-33-353-004. The variance was denied for the north elevation. There has been no unique circumstance or hardships identified here and there is nothing to prevent them from using the building with the doors on other elevations.

MOTION carried.

The following resolution was offered by GALLAGHER and seconded by SLOSSON:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0347-Request to allow an overhead door to face a residential area; Located on the north side of Hall Road, east of Romeo Plank; Section 33; Elder Automotive Macomb Land Company, LLC, Petitioner. Permanent Parcel No. 08-33-352-032, 08-33-352-033, 08-33-353-003 and 08-33-353-004. The variance is for the east elevations only. The property is zoned residential but it is Master Planned for commercial.

MOTION carried.

8. **VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;**
Permission to vary Section 10.1605(G)-Request to reduce the 40' setback/greenbelt area at the rear property line from 40' to 8'.
Located on the North side of Hall Road, approx. 1/4 mile West of Romeo Plank Road; Section 32; Russell W. Craig, Petitioner. Permanent Parcel Nos. 08-32-400-013 & 08-32-400-015

Chairman FLORENCE read the findings and recommendations of March 3, 2005. They are as follows:

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The petitioner is requesting a variance from the standards of the C-2 zone of the Macomb Township zoning ordinance. The ordinance requires that a 40' greenbelt and 6' wall be provided where a parking area of a commercial parking area abuts a residential neighborhood.

The petitioner received site plan approval for an office building to be located in the C-2 zone with the inclusion of an 8' greenbelt and 6' wall. Since that time the petitioner has acquired additional property and must submit a revised site plan incorporating the acquired property.

The original plan approved by the Planning Commission was based upon a computation of the square footage area of two buildings vs. parking for the ultimate project. Building A was to contain 20,804 square feet including a full basement and Building B was to contain 14,118 square feet with only a partial basement. When construction commenced, the petitioner dug full basements for both buildings. The Building Department in reviewing the first stage of development, discovered that the petitioner had apparently planned to build a full basement in building B even though the Planning Commission approved the building with a basement of only 3,998 square feet rather than the 10,402 square feet of the basement allowed in building A. The Building Department issued a stop work order at that time. The petitioner proceeded with the construction of Building A. The parking area has not yet been paved and the walls and greenbelts have not yet been installed.

Since the time of the original site plan approval, the Township has amended the zoning ordinance to provide for a buffer between commercial parking and residential by increasing the width of landscape areas to better protect the adjacent residential uses from commercial and office parking areas.

It is noted that a major purpose of reviewing revised site plans is so that amended ordinances may be applied to the project. In this case, the residential properties would be greatly improved with the application of the new standards for commercial parking lot development. The new standards are designed to protect abutting residences and to create a proper relationship between uses.

The provisions of the amended ordinance have been applied to other properties in the Township.

The development of the recently acquired parcel for parking purposes will have a detrimental affect on the adjacent property owners. The original plan was approved without a parking facility on the east portion of the property and is adjacent to the newly acquired property.

A total of three residences exist to the north of the property in question.

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RECOMMENDATION:

It is recommended that the variance request be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other structures planned in commercial zones in Macomb Township have and will be required to comply with the same greenbelt setback requirements which is evidence that the proper greenbelt setback would not be unnecessarily burdensome.
3. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in C-2 developments in Macomb Township. The other owners are or will be required to comply with the 40' greenbelt setback requirement. As a result the other property owners do not have the opportunity to make use of an additional 32' distance from a residential area.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the greenbelt setback from being maintained 40' from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

The variance would amount to reducing the required greenbelt setback by approximately 80%.

The following letter of explanation was submitted by the petitioner dated February 7, 2005 as follows:

“On December 2, 2003, the Planning Commission approved the Site Plan for Dr. Craig’s Hall Road Office Buildings. Subsequently, Engineering Plans were approved by the Township Engineer, and building permits were issued. This site is currently under construction. Please refer to the attached approved Site Plan Exhibit “A”.

During the course of construction, the applicant (Dr. Russell W. Craig, President of Trebax Land Development LLC) purchased a portion of McDonald’s property in order to straighten his eastern property line, allowing him additional area for parking spaces, and allowing both office buildings to become symmetrical, as indicated on the current Site Plan. Please refer to the attached Site Plan Exhibit “B” (and to the full-size Site Plan drawings also submitted).

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The Site Plan was originally approved with a greenbelt setback of eight (8) feet. With the addition of the property purchased from McDonald's, the parking lot was simply extended east.

However, since the Site Plan was originally approved and building permits were issued, a Zoning Ordinance amendment was produced which requires a forty (40) feet wide greenbelt setback (Ordinance Section 10.1605.G). This would apply only to the newly-acquired property at the northeast corner of the site.

Applying the new greenbelt setback presents several hardships to the project. First, it would create an abrupt 32-foot change in the parking lot setback. This would neither be aesthetic nor would it allow for a uniform parking configuration. There would be a net loss of several parking spaces. The reason the applicant pursued the additional property in the first places was because he needed additional parking spaces in order to "clean up" his Site Plan and have both office buildings be symmetrical. Adhering to the required forty (40) foot setback would defeat the purpose of the purchased property. Lastly, a reduce setback is not against the spirit and intent of the Ordinance because there would be no adverse impacts on neighboring properties. The new parking area is simply an extension of the parking area that had already been approved."

Nathan Robinson, representative, was in attendance and asked for a clarification that the 40 foot greenbelt area applies to the recently acquired property from McDonald's and not the entire site. He questioned at what point in time does the requirement change for a site plan that has previously been approved

Chairman FLORENCE asked for clarification from the Planning Consultant if it was the intent of the Township to apply the revised new requirement to the full site.

Jerome R. Schmeiser, Planning Consultant, stated he had been told that they are to apply the requirements to the entire site.

Nathan Robinson stated that was in contrary to a letter that was received from the Planning Department. It only applies to the newly acquired property. If it applied to the entire site it would be taking away 24 spaces and we would not be able to building the two buildings as approved now.

Public Portion:

Mike Fahey, 45263 Heatherwoode, stated he was in favor of the 40 foot greenbelt setback. This would keep the noise level down.

MOTION by SLOSSON seconded by POPOVSKI to close the public portion.

MOTION carried.

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MOTION by GALLAGHER seconded by POPOVSKI to deny the variance request of Section 10.1605(G)-Request to reduce the 40 foot setback/greenbelt area at the rear property line from 40 feet to 8 feet; Located on the north side of Hall Road approximately ¼ mile west of Romeo Plank Road; Section 32; Russell W. Craig, Petitioner. Permanent Parcel No. 08-32-400-015. The variance was denied based on the fact the ordinance had been updated and that there is nothing unusual about the property to prevent them from providing the 40 foot greenbelt.

Nathan Robinson stated he agreed that there was nothing unique about the property. It is a unique situation in the fact there is already an approved site plan that has been under construction. We had been notified by the Township that this application only applies to the newly acquired property. If we knew this applied to the whole property we would not be here. We would be losing 24 spaces and it would be worse then what we previously had approved.

Dr. Russell Craig stated the property is unusable space. He also stated that notification had been received from the Township that any ordinances had changed.

Chairman FLORENCE stated that a monetary outlay does not qualify for a practical difficulty. He then mentioned that a revised application needs to meet any new standards to protect the neighboring residents and the proper relationship between those uses.

MOTION carried.

9. OLD BUSINESS

None.

10. BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated the next regular meeting was scheduled for May 10, 2005.

11. PLANNING CONSULTANTS COMMENTS

None.

12. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA

MOTION by GALLAGHER seconded by POPOVSKI to file and receive all correspondence.

MOTION carried.

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ADJOURNMENT

MOTION by SLOSSON seconded by GALLAGHER to adjourn the meeting at 8:55 P.M.

MOTION carried.

Respectfully submitted,

Brian Florence, Chairman

Dawn Slosson, Secretary

Beckie Kavanagh, Recording Secretary

BK